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ABSTRACT

In this chapter on decisions made by federal and state courts during 1983 concerning school property it is noted that no new trends emerged during the year. Among the topics addressed are the extent of school board authority over property use and other property matters; the attachment and detachment of land from school district holdings; school bond referenda; zoning, development, and land use issues (frequently involving attempts by churches to operate schools in restricted areas); factors affecting building design and construction, including relations between school districts, builders, suppliers, and others; challenges to school closure decisions; property tax assessment, exemptions, liens, and payments involving school authorities; claims of personal injury resulting from negligence in the design, construction, or maintenance of school facilities; trespass; and landlord-tenant relations. Also reported are property-related cases affecting institutions of higher education in the same basic topic areas, as well as in the areas of estates, bankruptcy, income taxes, and public nuisance claims. (PGD)

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PROPERTY

Steven M. Goldblatt*

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EA 017 507

7.0 INTRODUCTION

Due to wider coverage, this year's property chapter reports more than twice last year's number of cases and more than five times the total of the year previous. New sections include property tax, personal injury, landlord/tenant, and trespass cases. The zoning section has grown and the higher education section has expanded dramatically.

No new trends emerge in this year's cases. Only a dozen states go unrepresented, while seven states generate over half of the cases and New York state alone more than 20 percent.

7.1 GENERAL SCHOOL BOARD AUTHORITY OVER PROPERTY MATTERS

Courts support the reasonable exercise of school board authority, but find excessive those acts that are arbitrary or ignore established policies and procedures.

In Kansas, a church requested permission to rent space in a school building for Sunday morning services. The district denied the request, as it would violate a district policy allowing rental only for nonreligious meetings. The United States district court ordered the district to allow the church to rent the space. By allowing the school to be used during nonschool hours by other groups, the district had created a "public forum" and could not exclude the church because of religious content.[1]

Arkansas landowners filed a petition alleging that they had no reasonable access to their land. Pursuant to state law, they asked that a road be established across a school district's property. The district requested that the petition be denied since other access was available and the proposed road would endanger school children. The county court denied the petition and the landowners appealed to the circuit court and, finally, to the supreme court. The supreme court upheld the decision, ruling that an alterante route, though costly, was available.[2]

For many years, a New York teachers' association had used school buildings for office space without a written lease. The superintendent told the association that its "license" to use space was being terminated. The association brought an action to enjoin its removal until the matter was arbitrated. The court of appeals, reversing the decision of the lower court ruling that the matter was not arbitrable, held that the right of the association to use office space in school buildings fell within

1. Country Hills Christian Church v. Unified School Dist. No. 512, 560 F. Supp. 1207 (D. Kan. 1983).

2. Armstrong v. Harrell, 648 S.W.2d 450 (Ark. 1983).

the arbitration clause of its labor contract. Also, the arguments of the board that the arbitrator might make an award that could be in violation of public policy did not justify judicial intervention in the arbitration process at that stage.[3]

A Pennsylvania school district levied a tax on privileges of obtaining building permits and engaging in construction. The commonwealth court found the levy to be "unreasonable" and declared the tax invalid. However, the supreme court found the tax to be valid up to the date of an amended legislative act, and invalid thereafter.[4]

In 1965, a Tennessee city and county had entered into a contract to renovate an existing school and construct a new facility outside the city limits, but within the county. The new facility was leased to the city as long as the facility was used to educate city and county students, and the county agreed to pay the city for county students going to school. In 1976, the county moved to take control of the new school. The trial and appeals court held that joint control was necessary. The parties requested supreme court review and that court found the city to have control.[5]

In Virginia, a suit was filed against a school board seeking specific performance of its verbal contract to purchase real estate. The trial court ruled against the board. The supreme court reversed that decision, reaffirming the code that required such contracts to be in writing.[6]

In Michigan, a circuit court ordered specific performance of a verbal agreement between a school district and taxpayers to share the cost of constructing a road. The district appealed the order to share the costs, stating that the agreement was void because no time for performance was specified and current construction costs were unreasonably high. The court of appeals affirmed the decision, ruling that, when a contract is silent regarding the time of performance, the law should presume a reasonable time.[7]

The taxpayers of a New York school district brought an action against the district, seeking the voiding of a lease of district property to a cooperative educational service. At trial, the taxpayers motioned for a preliminary injunction and the school cross-motioned to dismiss the complaint. Dismissal was granted by the court. Upon appeal, the supreme court ruled in favor of the district because the original

3. Board of Educ. of Connetquot Cent. School Dist. v. Connetquot Teachers Ass'n, 458 N.E.2d 373 (N.Y. 1983).
4. Heisey v. Elizabethtown Area School Dist., 467 A.2d 818 (Pa. 1983).
5. Hamblen Cty. v. City of Morristown, 656 S.W.2d 331 (Tenn. 1983).
6. School Bd. v. Burley, 302 S.E.2d 53 (Va. 1983).
7. Bruno v. Zwirkoski, 335 N.W.2d 120 (Mich. Ct. App. 1983).

complaint was based upon an alleged violation of a statute that was inapplicable to the facts.[8]

A New York school board solicited bids to sell a parcel of undeveloped land. The bid solicitation contained certain "restrictive clauses" and the petitioner submitted an offer in conformance with the bid specifications. The only other bid was lower, but the bid solicitation to the low bidder did not include the restrictive clauses. The low bid varied substantially and materially from the advertised bid specifications. Nevertheless, the board awarded the contract to the low bidder. The county court granted a motion to dismiss the petition. However, the supreme court, appellate division, held that the board had exceeded its authority to sell school property by rejecting the highest, responsible offer submitted by a responsible bidder. The dismissal was reversed and the petition remitted for further action.[9]

Ohio taxpayers and parents of students brought an action against a school board to enjoin the completion of a plan to terminate the eighth grade from one school and transfer the students to another. The court of appeals, reversing the decision of the lower court against the board, found that there was no restriction or limitation upon its authority to terminate respective grades and transfer them to another school that met all minimum standards for schools having such grades.[10]

The Ohio state board of education assigned a school district to a membership in a vocational school district. The school district appealed to the trial court, which dismissed the motion. In reversing, the court of appeals found that the resolution by the state board was quasi-judicial in nature and subject to judicial review.[11]

A Texas school board leased a portion of its property, offering the lessee a purchase option. An agent of the lessee stated several times that he was exercising the purchase option. The lease expired, but both parties continued the status quo. Several years thus passed when the lessee filed suit demanding specific performance of the purchase option. The trial court, with the district court of appeals affirming, ruled that proper notice of the purchase had not been made prior to the lease expiration date. The courts granted the board's motion for judgment n.o.v.[12]

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8. Beil v. Russo, 465 N.Y.S.2d 425 (N.Y. Sup. Ct. 1983).

9. Merritt Meridian Constr. Corp. v. Gallagher, 466 N.Y.S.2d 381 (N.Y. App. Div. 1983).

10. Ferris v. Paulding Exempted Village School Dist. Bd. of Educ., 454 N.E.2d 957 (Ohio Ct. App. 1983).

11. *In re* New Riegel Local School Dist., 456 N.E.2d 1275 (Ohio Ct. App. 1983).

12. Thermo Products Co. v. Chilton Indep. School Dist., 647 S.W.2d 726 (Tex. Civ. App. 1983).

7.2 ATTACHMENT AND DETACHMENT OF LAND

Petitions for land attachment and detachment, school district dissolution, and student transfer are generally upheld by the courts, except in some cases where "competing" districts have legitimate, opposing interests.

In Alaska, the state approved the transfer of land and buildings to a city school district. A regional school district that was using a portion of the building filed suit against the state, contending that a state statute mandated transfer to it of those portions of the building that it used. On appeal, the supreme court found that under the statute, transferring for partial conveyance of the portion of the building being used was not required.[13]

An Arkansas school district requested its county board of education to transfer 240 acres of land from another district to itself. A 1941 court order had awarded the land to the other district. The circuit court affirmed the transfer, but, upon appeal, the case was remanded for retrial. Again the trial court approved the transfer and the supreme court affirmed that decision. The 1941 court order was termed void due to an ambiguous land description, and written consent had not been made by certain parties as requird by the law then in effect.[14]

A Mississippi city proposed annexation of some land, a portion in the city school district and the remainder in another. State law provided that such lands be merged with the municipal district. The other district filed a petition for a referendum on the question of merger, citing a statute adopted years earlier for a similar case. The trial court ruled that the cited statute was not applicable to this circumstance and the supreme court affirmed the decision.[15]

In Nebraska, taxpayers petitioned for the freehold transfer of their land into another school district. A freeholder board denied the transfer. Both the district court and the supreme court reversed that decision, citing as the sole issue in freehold transfer cases "the best educative interest of the child."[16]

A Nebraska superintendent announced at a public hearing that he was dissolving the school district and merging it with another because there were no students. The trial court immediately issued a temporary injunction against such action, but dissolved the injunction. The district appealed on the grounds that any dissolution should have been

13. State v. Bering Strait Reg. Educ. Attendance Area School Dist., 658 P.2d 784 (Alaska 1983).
14. Board of Educ. v. Ozark School Dist. No. 14, 655 S.W.2d 368 (Ark. 1983).
15. Western Line Consol. School Dist. v. Greenville Mun. Sep. School Dist., 433 So. 2d 954 (Miss. 1983).
16. Janzen v. Norquest, 330 N.W.2d 481 (Neb. 1983).

announced after a public hearing and that the district was denied due process before an impartial hearing officer. The supreme court judged the appeal to be without merit.[17]

In North Dakota, a state committee for school district reorganization approved a local committee's dissolution plan. The district court reversed the order, and the decision was appealed. The supreme court held that the dissolution order of the local committee was not subject to direct judicial review and the approval by the state committee was supported by the evidence.[18]

In North Dakota, parents petitioned the state board of education to allow their children to attend a school much closer to home. The board denied annexation so the school district appealed to district court. The appeal was dismissed because the district was not an aggrieved party, as were the parents, and the supreme court affirmed the dissmissal.[19]

In Illinois, owners of a large tract of land appealed a denial of petition for disconnection from one school district and annexation to another. The property involved was uninhabited, but the hearing board had to decide the welfare of future pupils who might reside there using the "whole child" and "community of interest" factors. Affirming the trial court's order for disconnection and annexation, the appellate court found that the overall benefit to the annexing district outweighed the costs to the losing district.[20]

In Illinois, individuals brought a petition to transfer territory from one school district to another. One county school board approved the petition and the other board denied the petition. The issue was whether the withdrawal of signatures from the petition prior to the denial was proper basis for the denial. The appellate court, in reversing

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17. School Dist. No. 39 v. Farber, 341 N.W.2d 320 (Neb. 1983). In Nebraska, a taxpayer and former resident brought suit against a superintendent who intended to dissolve the school district and merge it with another. The plaintiff did not dispute the dissolution itself, but the choice of district to be merged with. Affirming the trial court's decision in favor of the superintendent, the supreme court found his actions "neither arbitrary, capricious, nor unreasonable." Acklie v. Jensen, 341 N.W.2d 918 (Neb. 1983). Nebraska landowners appealed from an order by a county school superintendent dissolving her school district. The district court dismissed the appeal petition for lack of jurisdiction. The dismissal was based on the defendant's contention that certain "irregularities" in the plaintiff's method of appeal had invalidated the appeal, thus preventing the district court from acquiring jurisdiction. The supreme court ruled that the "irregularities" did not prevent jurisdiction by the lower court and remanded the case to it. Stigge v. Graves, 332 N.W.2d 49 (Neb. 1983).

18. Garner Pub. School Dist. No. 10 v. Golden Valley Cty. Comm. for Reorg. of School Dist., 334 N.W.2d 665 (N.D. 1983).

19. Washburn Pub. School Dist. No. 4 v. State Bd. of Pub. School Educ., 338 N.W.2d 664 (N.D. 1983).

20. City Nat'l Bank of Kankakee v. Shott, 447 N.E.2d 478 (Ill. App. Ct. 1983).

a circuit court decision, ruled that the withdrawal of names from the petition was timely and the denial was not proper.[21]

An Illinois appellate court affirmed the order of a regional board of school trustees dismissing, for lack of jurisdiction, a petition for detachment. The court held that the board's action was not necessarily arbitrary and capricious simply because it issued its decision before it made express findings of fact and conclusions of law and the board had authority to reconsider its jurisdiction regardless of any authorization or lack thereof by a trial court.[22]

The Ohio state board of education denied the request of a village to transfer a portion of its territory to another school district. Village residents appealed to the trial court, which claimed lack of jurisdiction and dismissed the appeal. The appeals court affirmed the dismissal.[23]

An Oregon school district boundary board denied a petition for the transfer of land from one district to another. The petitioners appealed and the court of appeals reversed and remanded the board's decision. The board again denied the petition and again the denial was appealed. The court of appeals held that the educational equality of the two districts and the fact that the petitioners would receive a tax advantage were not sufficient reasons to deny the petition. The denial was reversed and remanded for further action.[24]

7.3 SCHOOL BOND REFERENDA

An existing school having been destroyed by fire, a Mississippi school board proposed a bond issue for new facilities' construction at a new location. The bond issue was passed overwhelmingly by voters. However, the state educational finance commission denied construction at the new site and offered alternative sites, citing low local population density, potential high transportation costs, and inferior access roads. The board argued rapidly increasing local population, zero land cost, and location away from undesirable influences existing at the previous facility. The local chancery court reversed the denial on grounds of insubstantial evidence. The supreme court affirmed that decision.[25]

Two Illinois school districts levied property taxes to pay for bonds issued to increase working cash funds. Tax objectors argued that

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21. Konald v. Board of Educ. of Commun. Unit School Dist. 220, 448 N.E.2d 555 (Ill. App. Ct. 1983).
22. Shapiro v. Regional Bd. of School Trustees of Cook Cty., 451 N.E.2d 1282 (Ill. App. Ct. 1983).
23. *In re* Cleveland City School Dist., 446 N.E.2d 495 (Ohio Ct. App. 1982).
24. Messer v. Polk Cty. Dist. Boundary Bd., 670 P.2d 183 (Or. Ct. App. 1983).
25. Educational Fin. Comm'n v. Jackson Cty. School Dist., 415 So. 2d 680 (Miss. 1982).

districts could issue bonds to *create* working cash funds but could not incur additional indebtedness by issuing bonds to *increase* their working cash funds. The trial court ruled in favor of the districts. However, the appellate court ruled that creating a fund was a single act and the only way to increase an existing working cash fund was by tax levy. The original decision was thus reversed.[26]

In North Carolina, concerned citizens brought suit against a county to invalidate a school bond referendum. The trial court granted the county's motion for summary judgment. Upon appeal by the citzens, the appeals court affirmed and found the citizens' claims not only barred since the statute required challenges be brought within thirty days, but also without merit.[27]

7.4 ZONING AND DEVELOPMENT

This expanded section reports cases of zoning, development, and land use issues. Half of the cases involve church attempts to operate schools in restricted areas.

In Alaska, a church sought relief against enforcement of a zoning restriction on nonpublic schools. The church desired to operate a parochial school in the church building. The superior court entered a judgment in favor of the city. Upon appeal, the supreme court held that a zoning ordinance excluding nonpublic schools from a newly created "rural residential" zone was based on a reasonable conclusion that a school may have an adverse impact, such as noise, increased traffic, and litter on the community populated by single-family residences. This was not violative of due process or an infringement of free exercise of religion.[28]

An Arkansas church board submitted a conditional use zoning application for construction of a church in a district zoned residential. The application was approved and another permit submitted for operation of a church. The zoning board again approved the application, but distinctly pointed out that school operation would require a third, separate conditional use permit. Within months, a school was operating and the trial court enjoined such actions until a school-type permit was obtained. The supreme court affirmed.[29]

In California, a school district brought an action challenging the adequacy of an environmental impact report for a proposed residential development. The court of appeal, affirming the decision of the lower

26. People *ex rel.* v. Walgenbach, 452 N.E.2d 760 (Ill. App. Ct. 1983).
27. Wright v. County of Macon, 308 S.E.2d 97 (N.C. Ct. App. 1983).
28. Seward Chapel, Inc. v. City of Seward, 655 P.2d 1293 (Alaska 1982).
29. Abram v. City of Fayetteville, 661 S.W.2d 371 (Ark. 1983).

court in favor of the district, held that the report should have contained evidence of present overcrowding of the high school, increasing enrollment, and the necessity for construction of one new high school, and the report was inadequate because it failed to say anything about the effects of an increase in student population and suggested no measures to deal with this impact.[30]

In California, a developer brought suit for refund of an interim facilities fee imposed under the School Facilities Act. A two-phase luxury condominium complex was being constructed and the developer contended that, by its nature, it would not cause the need for interim school facilities. The court of appeals held that the developer was entitled to pay the fee under protest and sue for a refund, and the county's denial of an exemption was reasonable and in accord with the Act's purposes.[31]

In New York, an application for a special permit proposed the use of part of a school building as a hospital billing office. The supreme court, appellate division, denied the application, holding that the school and office were separate and were thus barred by the city's zoning ordinances, and the proposed use did not satisfy the requirements for off-street parking.[32]

In New York, city officials appealed the judgment of a lower court directing them to issue a building permit for the renovation of a building into an instructional health service facility. Affirming the decision, the supreme court, appellate division, held that the interpretation of the zoning ordinance limiting the uses in the "Central Business District-Office and Service District" to music and dancing instruction would violate the plain meaning of the ordinance.[33]

The Oregon land use board of appeals determined that a city council's interpretation that its zoning ordinance required a church to obtain a conditional use permit to operate an elementary school on church premises was not a "land use decision." The court of appeals

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30. El Dorado Union High School Dist. v. City of Placerville, 192 Cal. Rptr. 480 (Cal. Ct. App. 1983).

31. McLain Western No. 1 v. County of San Diego, 194 Cal. Rptr. 594 (Cal. Ct. App. 1983). A California school board appealed a judgment ordering it to refund certain school impact fees assessed against a residential subdivision developer. The fees were assessed under an existing contract with the developer to provide temporary facilities for already overcrowded schools. However, due to declining enrollment, new developers were not required to pay such fees. The court of appeals ruled that the payment of the fees had given the developer the benefit of acquiring a building permit, so no refund was necessary. Candid Enterprises, Inc. v. Grossmont Union High School Dist., 197 Cal. Rptr. 429 (Cal. Ct. App. 1983).

32. Cathedral of Incarnation v. Glimm, 467 N.Y.S.2d 241 (N.Y. App. Div. 1983).

33. Italiano v. City of Syracuse, 468 N.Y.S.2d 771 (N.Y. App. Div. 1983).

reversed and remanded, holding that the council's action was a "land use decision" and that the board had exclusive jurisdiction.[34]

7.5 BUILDING DESIGN AND CONSTRUCTION

Significantly expanded last year, this section reports on the continuing battles among school districts, architects, contractors, subcontractors, material manufacturers and suppliers (especially of roofs), sureties, and arbitrators.

7.5a Competitive Bids

An Illinois appellate court reversed a lower court decision on competitive bidding. The court held that an unsuccessful bidder could challenge a school board decision by alleging violation of the statutory provision requiring contracts be awarded to the lowest bidder and, if the sole reason that the board did not award a contract to an unsuccessful bidder was a desire to keep contract monies in the local area, that would indicate favoritism, which was a violation of statutory mandate.[35]

7.5b Construction Funding

In Massachusetts, a town appealed a judgment declaring state reimbursement of 50 percent of a new school's construction costs. The town requested 65 percent reimbursement pursuant to a short-lived measure for projects approved after January 1, 1971. The appeals court ruled that approval for this project took place prior to January 1, 1971, and was thus not eligible for the higher reimbursement.[36]

7.5c Prevailing Wages

As the result of an enforcement action by the California department of labor standards, a contractor filed a cross-complaint against a school district, alleging that it was not notified of the requirement to pay prevailing wages on district public works projects. The superior court and, subsequently, the court of appeals ruled that the district had properly notified the contractor and the contractor was fully responsible for its actions.[37]

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34. Medford Assembly of God v. City of Medford, 669 P.2d 1161 (Or. Ct. App. 1983).
35. Cardinal Glass Co. v. Board of Educ. of Mendota Commun. Consol. School Dist. No. 289, 447 N.E.2d 546 (Ill. App. Ct. 1983).
36. Town of Burlington v. Board of Educ., 448 N.E.2d 398 (Mass. App. Ct. 1983).
37. Fanelli, Antuzzi, Bonacorsi Painting, inc. v. Santa Clara Unified School Dist., 190 Cal. Rptr. 515 (Cal. Ct. App. 1983). *See* S. Goldblatt and R. Wood, *Financing Educational Facility Construction: Prevailing Wage Litigation*, SCHOOL LAW UPDATE—1982 (NOLPE 1983).

7.5d Roofs

A Florida architect designed three schools in one county, all with similar roof systems. Built by 1970, all the roofs leaked, required extensive repairs, and had to be replaced. The school board sued the architect in 1977 after it spent years making repairs. The trial court ruled for the architect since a four-year statute of limitations had barred the claim. The court of appeal overturned the decision; the board's continual reliance on the architect to correct the problem had hidden the fact that the roofs were irreparable, thus deferring the limitations period. However, the supreme court agreed with the trial court and the dissenting appellate judge who stated: "The client should give up on his amiable, but bungling professional, get competent help and sue, or be forever barred from asserting his stale claim."[38]

In Kansas, a school district sued a roofing manufacturer for damages from a leaking roof. The manufacturer, in turn, filed a claim against the architects, the roofing contractor, and the manufacturer of the light-weight concrete insulating material. The supreme court affirmed the decision of the lower court holding that, until the roofing manufacturer had paid or was required to pay the district, it had no claim against the third-party defendants who were not parties to the manufacturer's contracts of guarantee with the district.[39]

A Michigan school district prevailed in arbitration over several construction companies for damages caused by a leaky roof on a new school building. In circuit court, the arbitration award was upheld. The court of appeals found that the roof was a "product" under a product-liability statute and that failure to use a product-liability statute of limitations defense in arbitration barred its use in court proceedings. A "continuity of enterprise" also barred the defense that the purchase of a corporation by another eliminated the liability of the purchased corporation. The circuit court decision was affirmed.[40]

A New York contractor had been hired in the late 1960s to install a roof on a school building. The school district brought an action for repair or replacement of the roof as well as compensatory or punitive damages. The supreme court graned the contractor's motion to dismiss the district's cause of action. The supreme court, appellate division, held that the damages contemplated by the district's complaint involved only economic loss. Recovery in tort, including negligence, was unavailable. The decision of the lower court was affirmed.[41]

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38. Kelley v. School Bd., 435 So. 2d 804 (Fla. 1983).
39. Haysville Unified School Dist. No. 261 v. GAF Corp., 666 P.2d 192 (Kan. 1983).
40. Fenton Area Pub. Schools v. Sorensen-Gross Constr. Co., 335 N.W.2d 221 (Mich. Ct. App. 1983).
41. Queensbury Union Free School Dist. v. Jim Walter Corp., 463 N.Y.S.2d 114 (N.Y. App. Div. 1983).

A North Carolina school board sued a general contractor and subcontractor when the roof of its new school leaked. The board also sued the subcontractor for breach of its maintenance contract. The trial court ruled that the maintenance contract was not enforceable, but ruled in favor of the board on the construction contract. However, the board had furnished a defective design, so no damages were awarded. The first appeal affirmed the construction contract judgment, and the court also awarded the board damages for breach of the maintenance contract. A second appeals court found no error and affirmed the decision.[42]

In 1968, a Pennsylvania construction company had defaulted and failed to complete a high school building. Instead of paying off the performance bond, the surety found another company to complete the job. In 1977, the school authority and district brought an action against the surety to recover for defects discovered in the roof. The lower court entered summary judgment against the school, citing a statute of limitations. On appeal, the decision was reversed in favor of the school, due to an apparent contractual oversight in which no time limitation was placed on the surety's liability.[43]

7.5e Design and Performance

In South Dakota, a school district brought an action for breach of contract in the construction and maintenance of a swimming pool area. The supreme court, affirming a prior decision, ruled that a six-year statute of limitations barred the action for damages arising out of a deficiency in design, planning, supervision, inspection, or construction of an improvement to real property.[44]

In Massachusetts, an architect performed services for a city in connection with the construction of a school. Not satisfied with its remuneration, the architect brought suit seeking additional compensation. A master ruled in favor of the architect and the city appealed. The appeals court held that the architect was not entitled to interest prior to the payment due date and the fact that an appropriation for the architect's work had not been made when the contract was signed did not preclude a recovery when an appropriation was eventually made. This reversed a portion of the prior judgment and affirmed a portion of the award to the architect.[45]

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42. Burke Cty. Pub. Schools Bd. of Educ. v. Juno Constr. Corp., 306 S.E.2d 557 (N.C. Ct. App. 1983).
43. Peters Twp. School Auth. v. United States Fidelity and Guaranty Co., 467 A.2d 904 (Pa. Commw. Ct. 1983).
44. Mitchell School Dist. No. 17-2 v. Welfl Constr. Co., 329 N.W.2d 138 (S.D. 1983).
45. Turiello v. City of Revere, 443 N.E.2d 1357 (Mass. App. Ct. 1983).

In Massachusetts, a subcontractor brought suit against a general contractor seeking reimbursement for the extra cost of using a more expensive acoustical coating material on a school. The contractor filed a third-party action against the city, alleging that the architect's disapproval of the less expensive material was arbitrary and wrong. The city counterclaimed against the contractor for the subcontractor's allegedly defective workmanship, which prompted the contractor to counterclaim against the subcontractor for recovery of any damages it might have to pay to the city. The trial court found in favor of the subcontractor and the contractor concerning the additional cost, and in favor of the city and the contractor concerning the workmanship. The appeals court vacated and remanded the decision of the trial court, holding that the architect's decision not to approve the use of an interior coating other than that described in the specifications was binding and final and that the trial judge's computation of damages was inaccurate.[46]

A New York school board contracted for the design, construction, and erection of some modular buildings. A subcontractor constructed the individual modules offsite and transported them to the site where they were to be placed on permanent foundations and a permanent roof applied. The field application of the roof and foundation alignment were to be performed by the contractor. Before the alignment of the modules or installation of the permanent roof had begun, there was a severe rainstorm and the modules suffered water damage. The board then sued the subcontractor and the architect, who in turn sued the contractor. The supreme court, appellate division, held that neither the architect nor the subcontractor was liable to the board for water damage, and it was the general contractor's obligation to protect the modules from the elements once the modules were delivered.[47]

In New York, a school district filed suit against a surety on a contractor's performance bond for damages resulting from defective construction of a high school athletic facility. The supreme court, appellate division, held that a prior judgment for the contractor against the district for final payment on the facility was res judicata as to the district's action against the surety.[48]

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46. Acmat Corp. v. Daniel O'Connell's Sons, Inc., 455 N.E.2d 652 (Mass. App. Ct. 1983).

47. Jewish Bd. of Guardians v. Grumman Allied Indus., Inc., 464 N.Y.S.2d 778 (N.Y. App. Div. 1983).

48. New Paltz Cent. School Dist. v. Reliance Ins. Co., 467 N.Y.S.2d 937 (N.Y. App. Div. 1983).

7.5f Contractor Claims

An Arkansas school district hired a contractor to perform renovations to a gymnasium. However, the contractor was not bonded as required by statute. Work was satisfactorily completed, but appellee, a material supplier, was not fully paid by the contractor. The supplier then discovered that the contractor was not bonded, but the contractor had already become insolvent. So the supplier filed suit against the district seeking a lien on the gymnasium. The chancery court imposed a lien, and the district appealed. The supreme court reversed and remanded the decision, stating that the duty was on the supplier to check public records for the bonding status of the contractor.[49]

In New York, a contractor performed work at a school under protest, reserving its right to make a claim for additional compensation. Four months after the final payment certificate was issued, the contractor presented the school board with a claim for additional compensation. The court of appeals ruled that the board could deny the claim because the governing statute barred the claim presentation beyond three months after completion.[50]

In Florida, a school board entered into a contract to build a new high school. The project overran its completion date and the contractor submitted claims for additional compensation. The board held a formal public hearing, dismissed the contractor's claims, and assessed liquidated damages. The court of appeal dismissed the contractor's appeal from the board's order, holding that the board lacked authority to so order and the contractor was "at liberty to pursue his cause of action in the appropriate judicial forum."[51]

In New York City, a contractor brought an action against the school board, seeking summary judgment on the question of liability for a delay of thirteen months in the construction of a high school. The basis for the action was the collateral estoppel effect of a prior action by a subcontractor against the board at the same project. The court held that the board was again responsible for the delay. The board appealed to the supreme court, appellate division, which stated that the contractor "failed to demonstrate that it stood in the same position as had the subcontractor." The court reversed the decision.[52]

In 1969, a Pennsylvania school district had contracted for plumbing work, allowing one thousand calendar days to complete the work. The district put the contractor on overtime for a portion of the contract,

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49. Beebe School Dist. v. National Supply Co., 658 S.W.2d 372 (Ark. 1983).
50. Public Improvements, Inc. v. Board of Educ., 438 N.E.2d 876 (N.Y. 1982).
51. Fasano v. School Bd., 436 So. 2d 201 (Fla. Dist. Ct. App. 1983).
52. Caristo Constr. Corp. v. Board of Educ., 464 N.Y.S.2d 828 (N.Y. App. Div. 1983).

but the contractor was not satisifed with the amount of extra compensation and brought suit. The court of common pleas awarded the contractor additional compensation, but the superior court reversed the decision because "it is essential that the contractor prove that its original estimate of labor costs was accurate . . . so that 'total cost' measurement of damages is reliable." The contractor failed to prove the accuracy of its original estimate, so extra damages were deemed improper.[53]

A Pennsylvania contractor brought an action to recover compensation from a school authority for extra work required on site development of a high school. The trial court entered a judgment for the contractor. The superior court ruled that the evidence did not support the school board's contention: change orders signed by the architect did not satisfy the contract requirement that additional work have written board approval. The evidence warranted a finding that there was a waiver of the written approval requirement. The award to the contractor was affirmed.[54]

7.5g Arbitration

A Connecticut contractor brought an action to correct an arbitration award over additions and alterations to a high school. The supreme court vacated the award because the arbitrators awarded items not submitted to them and did not award items that the school district had agreed to pay.[55]

A Kansas contractor claimed it was entitled to extra compensation because of change orders on a school construction project. The district claimed offsets for defects and delays in completion of the job. The construction contract specifically provided that all disputes arising under the contract should be decided by arbitration. The arbitrators found some items of dispute in favor of the contractor and other items in favor of the district. An award was confirmed for the contractor in district court, and the district appealed. The supreme court affirmed the decision, holding that the record revealed no fraud or arbitrary action or the denial of a fair hearing on the part of the arbitrators.[56]

In Montana, a mechanical subcontractor filed suit against a school district and its general contractor to recover payment for correcting a plumbing problem. In turn, the district brought an action against the

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53. John F. Harkins Co. v. School Dist., 460 A.2d 260 (Pa. Super. Ct. 1983).
54. Thomas M. Durkin & Sons, Inc. v. Nether Providence Twp. School Auth., 460 A.2d 800 (Pa. Super. Ct. 1983).
55. Waterbury Constr. Co. v. Board of Educ., 457 A.2d 310 (Conn. 1983).
56. Johns Constr. Co. v. Unified School Dist. No. 210, 664 P.2d 821 (Kan. 1983).

architect for designing a faulty plumbing system. The supreme court affirmed the decision of the district court, which held that the architect designed an inadequate system and was therefore responsible for payment to the subcontractor for subsequent corrections. The architect claimed that, since the district did not first arbitrate, it could not seek reimbursement for the payment to the subcontractor. The court found that when there were issues of law or mixed issues of law and fact, arbitration was not mandatory without the consent of the parties involved.[57]

A South Dakota construction company contracted to build a new school facility. During construction, the concrete supplier experienced a cement shortage, causing delays and additional costs to the contractor. The school district granted a time extension, but denied a request for extra cost reimbursement. The contractor then submitted a demand for arbitration and the arbitrator denied the claim for additional costs. The contractor appealed to the circuit court, charging the arbitrator with code violations. The circuit court ruled against the contractor and the supreme court affirmed, stating that the arbitrator did not violate code and the contract provided only for time extensions and was silent regarding claims for additional costs.[58]

A Maryland construction company and school board entered into a contract for renovation of a high school. When the company failed to complete the work on time, the contract was declared in default. The company filed for arbitration, alleging that the school district caused the delay and the board responded by bringing an action to stay the arbitration. The circuit court stayed the arbitration because the company had failed to present claims to the architect in a timely and proper fashion. The court of special appeals held that, since the company submitted affidavits that the parties had waived the requirement that claims be submitted to the architect, the trial court's decision to stay the arbitration because of its failure to present claims to the architect improperly adjudicated "the validity of underlying claims." The stay was thus vacated and the case remanded.[59]

In Massachusetts, an architect appealed the judgment of the superior court, which vacated an arbitration award in its favor. The appeals court held that, where two towns voted substantial sums for expenses to construct a regional high school but had placed a specific limit on

57. Ace Plumbing & Heating, Inc. v. helena Flats School Dist. 15, 662 P.2d 1327 (Mont. 1983).

58. L. R. Foy Constr. Co. v. Spearfish School Dist. No. 40-2, 341 N.W.2d 383 (S.D. 1983).

59. Stauffer Constr. Co. v. Board of Educ., 460 A.2d 609 (Md. Ct. Spec. App. 1983).

amounts authorized and also refused to vote for further appropriations, the school district was not free to use "surplus revenue" for the additional construction costs.[60]

A New York contractor demanded arbitration for work done on a school construction project. The school district instituted a counterclaim against the contractor, but arbitrators awarded judgment against the school "in full settlement of all claims." The district appealed to superior court, contending that the award was indefinite because it did not resolve the issues and disputes between the parties, nor did it include any data detailing how the award sum was computed. The supreme court and its appellate division both ruled that the arbitrator's award represented a bottom line resolution of all claims and need not include the formula used in calculating the award.[61]

7.6 SCHOOL CLOSURES

School district residents continue to challenge their boards' decisions to close schools due to declining enrollments, and the courts continue to uphold those decisions. School closures that further the goals of acceptable desegregation plans, whether court-mandated or not, also find court support.

7.6a General

In Iowa, district residents appealed a school board decision to close an elementary school. The supreme court affirmed the trial court's ruling in favor of the board, finding no abuse of guidelines or discretion. "Nor was the decision unreasonable, arbitrary or capricious."[62]

A Minnesota school district, in response to declining enrollments, decided to close some schools. Board meetings were held to discuss the issue, followed by public hearings and the establishment of a fact-finding committee. The supreme court held that the board complied with notice and hearing requirements of the school-closing statute and did not violate the open meeting law.[63]

In Illinois, a school board decided, due to decreasing enrollment and increasing costs, that it would be necessary to close one of its high schools and transfer its freshman students to other high schools. The appellate court, reversing the decision of the trial court against the

60. Plymouth-Carver Reg. School Dist. v. David M. Crawley Assoc., Inc., 455 N.E.2d 990 (Mass. App. Ct. 1983).
61. Reddick & Sons of Gouverneur, Inc. v. Carthage Cent. School Dist. No. 1, 459 N.Y.S.2d 156 (N.Y. App. Div. 1983).
62. Keeler v. Iowa State Bd. of Pub. Instr., 331 N.W.2d 110 (Iowa 1983).
63. Moberg v. Independent School Dist. No. 281, 336 N.W.2d 510 (Minn. 1983).

board, held that the board acted within its discretion in making a decision without strictly applying the criteria of school closures; the board was not strictly bound by the rules; the board was not required to state why it did not follow the criteria and, thus, was not arbitrary in failing to do so; and the students had not established a loss necessary to invoke the estoppel doctrine.[64]

In Missouri, declining enrollment caused a district to close a high school. A neighborhood association approached the school board about opening a "community-sponsored" experimental education program. A plan was adopted and the board budgeted money for the program, which would begin in six months. The association began organizing and planning for a autumn opening. By June, other financial problems began to plague the district. Schools were closed, teachers were laid off, and the experimental program was cut. In September, however, association members entered the vacant school building and began teaching. The district sought an injunction against trespassing, and the association filed suit seeking specific performance of the original contract. The trial court ruled for the board, stating that the board had no right to promise opening an experimental school. Thus, no contract had existed. The ruling was upheld by the court of appeals.[65]

In New York, a petition was sought to declare void a vote of a school board closing an elementary school and to restrain the board from closing any school in the district. The petition alleged that no public notice of the meeting was given, a violation of the open meetings law. The supreme court dismissed the petition, finding that a subsequent board meeting had met the law's requirements and had cured the prior violation.[66]

Residents of a Pennsylvania school district filed a complaint against the school board alleging that the board had improperly voted to close an elementary school. The court of common pleas denied the residents' request for a preliminary injunction and ruled on the merits that the school board's action was improper. The school board appealed. The commonwealth court held that "it was improper to treat a hearing on application for preliminary injunction as a final hearing on the merits and as a final decree." The order was vacated and the case remanded.[67]

7.6b Desegregation

An Indiana board of school commissioners, after public hearings,

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64. Tyska v. Board of Educ. Twp. High School Dist. 214, 453 N.E.2d 1344 (Ill. App. Ct. 1983).

65. Coalition to Preserve Educ. on Westside v. Kansas City School Dist., 649 S.W.2d 533 (Mo. Ct. App. 1983).

66. *In re* Dombroske, 462 N.Y.S.2d 146 (N.Y. Sup. Ct. 1983).

67. Crestwood School Dist. v. Topito, 463 A.2d 1247 (Pa. Commw. Ct. 1983).

closed a high school in accordance with court-ordered desegregation. Four students' parents filed suit against the board, arguing that the closure denied them "due process." The United States district court dismissed the suit because it was "an impermissible . . . attack on . . . the order in the desegregation case." The parents did not appeal, but instead filed an amended complaint to intervene in the desegregation case. The district court denied the filing of an amended complaint and the court of appeals affirmed.[68]

In Louisiana, the United States district court received a remand to reconsider the closing of a predominantly black elementary school and the closing of a predominantly white elementary school, coupled with the transfer of students from these schools to an elementary and middle school in a community located midway between the closed schools. On remand the court readopted the plan after considering it in greater detail. One school board reappealled, desiring the reopening of the predominantly white school, a modern facility, and claiming the imposed remedy to desegregate was "commensurate with a constitutional violation." The court of appeals affirmed the plan, holding that "to transfer students from predominantly black and predominantly white schools . . . to schools . . . nine miles away from each was a reasonable exercise of discretion."[69]

In Louisiana, the United States court of appeals upheld a district court decision not to accept a school board's desegregation plan. The school district had perpetuated a "dual system" until 1980 when a district court-approved plan was ordered. The board had contributed to racial segregation by construction of thirty-six new schools built since desegregation efforts began in 1963, of which twenty-one served student bodies of one predominant race. The closing of schools also created a pattern of segregation by closing those schools that geographically were appropriate for economically transporting students. In 1981-82 the court's plan had achieved desegregation of elementary schools by closing some older or inefficiently small schools and pairing or clustering the remaining elementary schools.[70]

A Texas school district was proven, in several separate court cases, to have failed to meet its duty to dismantle its dual system. The district was first ordered to institute a desegregation plan in 1970. In 1982 the district was again ordered to submit a desegregation plan, which was subsequently adopted with the approval of the United States district court. A citizens' committee appealed, and the court of appeals found

68. Peacock v. Board of School Comm'rs, 721 F.2d 210 (7th Cir. 1983).
69. Valley v. Rapides Parish School Bd., 702 F.2d 1221 (5th Cir. 1983).
70. Davis v. East Baton Rouge Parish School Bd., 721 F.2d 1425 (5th Cir. 1983).

that there had been repeated failures to develop and institute effective desegregation plans. The case was remanded to the district court to reevaluate the plan and its alternatives, including the closing of "all-minority" schools.[71]

In Maryland, a class action suit was brought against a school board alleging violations of outstanding orders of a district court that had relinquished jurisdiction after supervised implementation of a desegregation plan. The complaint stated that three of the seven newest schools either began or evolved into one-race schools. It also alleged that the board closed schools without regard to desegregation factors. The United States district court found that, while the closures did not indicate any purposeful discrimination, they did reveal that more could have been done to eliminate all prior segregation. No new orders addressed the school closings, but guidelines were implemented regarding the construction of public schools.[72]

In Michigan, a desegregation action was brought involving three school districts in an attempt to eliminate the predominantly one-race standing in those districts. A complicated and expensive transportation plan was ordered, but the United States district court was not satisfied with the relative ineffectiveness of the plan. The court preferred, but could not enforce, a solution that the districts had contemplated. The voluntary desegregation plan consisted of sharing in the construction of "magnet schools." The court spoke at length of its support and endorsement of such a self-serving remedy.[73]

In Texas, a motion to approve amendments to a city's desegregation plan was granted by the United States district court. A portion of the plan included the closing of nine elementary schools. The court found that the closures would contribute "to the natural integration of the 'stand-alone' schools."[74]

7.7 PROPERTY TAXES

This new section reports cases of property tax assessments, exemptions, liens, and payments involving public, nonprofit, religious, and vocational school authorities.

In Arkansas, school districts brought an action against three counties to turn over monies received under the Payments in Lieu of Taxes Act. Arkansas had adopted a code in 1977 excluding school districts from those "units of local government" authorized to receive payments

71. United States v. CRUCIAL, 722 F.2d 182 (5th Cir. 1983).
72. Vaughns v. Board of Educ., 574 F. Supp. 1280 (D. Md. 1983).
73. Berry v. School Dist. of City of Benton Harbor, 564 F. Supp. 617 (W.D. Mich. 1983).
74. Flax v. Potts, 567 F. Supp. 859 (N.D. Tex. 1983).

under the act. Although the districts claimed the act was "promulgated in excess" of its authority, the United States district court ruled in favor of the counties.[75]

A Pennsylvania taxpayer attempted to discharge or avoid a lien of taxes assessed against his real property by a school district. No one appeared at the hearing set for this matter but the court did not dismiss. Because this raised a recurring tax issue, the court wanted to "set forth its views: . . . [A] school tax . . . becomes a lien on real property when assessed . . . . No judicial action is required to bring the lien in question into existence."[76]

In Iowa, a vocational school appealed from a district court decision denying it a property tax exemption. The supreme court held that the school was not entitled to a tax exemption as a charitable institution on its leased property, in addition to the exemption it had as a school corporation for property it owned.[77]

In South Dakota, 327 landowners appealed the calculation of the assessed valuation and the taxable percentage imposed on their nonagricultural property. They contended that the higher taxable percentage on their property caused them to pay a disproportionate share of the county tax burden. The circuit court agreed. However, upon appeal, the supreme court ruled that the constitution and laws of the state allowed plural percentages for taxable valuations of different property classes within school districts.[78]

In Vermont, a property owner sought a declaratory judgment that his property was exempt from taxation. The owner contended that the property was operated as a nonprofit school for gymnastics and performing arts. The supreme court held that, since the school provided services the city was not required to provide, the trial court's finding that the property was not exempt would not be disturbed.[79]

In Illinois, a county treasurer sought judgment against a religious school to pay real estate taxes. The appellate court affirmed the decision of the lower court holding that the training association was used exclusively for "religious purposes" and, hence, was exempt from real estate taxes.[80]

A New York school district intervened in the reassessment of a parcel of land, on the basis that a reduction in its assessed value would result

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75. Altus-Denning School Dist. No. 31 v. Franklin Cty., 568 F. Supp. 95 (W.D. Ark. 1983).
76. Wilson v. Armstrong Cty. School Dist., 25 Bankr. 61 (W.D. Pa. 1982).
77. Merged Area (Educ.) VII v. Board of Rev., 326 N.W.2d 310 (Iowa 1982).
78. *In re* State Bd. of Equalization, 330 N.W.2d 754 (S.D. 1983).
79. Ski-Lan Gymnastics v. City of Rutland, 465 A.2d 1363 (Vt. 1983).
80. Evangelical Teacher Training Ass'n v. Novak, 454 N.E.2d 836 (Ill. App. Ct. 1983).

in an undue decrease in the district's tax base. The supreme court, appellate division, ruled that because the city, not the district, was liable for tax refunds, the district was not entitled to intervene in a tax assessment case.[81]

In 1976, the New York state legislature had enacted a declining ten-year tax exemption as a section of the real property tax law. It was for "real property constructed, altered, installed or improved . . . for the purpose of commercial, business or industrial activity." A county board of assessors wanted to cancel the tax exemptions for school tax purposes. An application to stop the county board from cancelling the exemptions was filed with the supreme court, which held that, since the resolutions reducing the tax exemption for school tax purposes were valid and effective prior to the date of the statute amendment, these exemptions could not be saved by the amendment.[82]

In New York, the terms of a foreclosure sale required the referee to pay from proceeds any taxes which "may become liens on the premises at the time of sale." School tax rolls were confirmed *prior* to the sale, but the fiscal year of the school district began *after* the sale. The supreme court granted a motion which, in effect, ruled that the taxes had not yet become liens. The appellate division ruled that this was a triable issue and denied the motion, remitting the matter back to the trial court for development of the facts.[83]

In New York, a school district passed a resolution granting a tax exemption to the owner of a resort hotel in return for the owner's offer to pay the assessed tax amount in lieu of taxes should casino gambling become legalized instate. Citizens brought an action against the district alleging that it had acted beyond the scope of its authority in passing the resolution. The supreme court, appellate division, held that the resolution was null and void as an attempt of the district to bargain away or sell its powers.[84]

A Pennsylvania school board appealed a tax board decision to place a school building on the tax rolls. The school board had rented the building to various charitable and religious organizations. The commonwealth court ruled that a building not used for its specified purpose, or one from which revenue is derived, should be subject to taxation.[85]

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81. Vantage Petroleum v. Board of Assessment Rev., 458 N.Y.S.2d 632 (N.Y. App. Div. 1983).
82. Walker v. Board of Assessors of Nassua Cty., 460 N.Y.S.2d 726 (N.Y. Sup. Ct. 1983).
83. Marine Midland Bank v. Greenblatt, 465 N.Y.S.2d 587 (N.Y. App. Div. 1983).
84. Citizens to Save Minnewaska v. New Paltz Cent. School Dist., 468 N.Y.S.2d 920 (N.Y. App. Div. 1983).
85. *In re* Souderton Area School Dist., 457 A.2d 194 (Pa. Commw. Ct. 1983).

In Pennsylvania, a nonprofit educational corporation with tax-exempt status applied for real estate tax exemptions for four residential properties situated on campus and occupied by school administrators and faculty. The board of assessment denied the applications for tax relief. The commonwealth court ruled that, absent a showing of actual and regular use of the residential properties for "educational functions and objectives," the property was not tax-exempt under the state's constitution.[86]

A Texas school district brought suit to recover delinquent ad valorem taxes on fifty-two miles of gas pipeline. The trial court entered a take-nothing judgment on the basis that the assessment was void because it was excessively high and resulted from a discriminatory plan or scheme. The appeals court ruled that nonpayment of an assessed tax was a prima facie case, and the tax was not in excess of the limit allowed by law. The judgment was reversed.[87]

In Texas, a school district and other taxing authorities brought suit against a taxpayer for three years' delinquent ad valorem taxes. The judgment in trial court was against the taxpayer, awarding taxes, penalties, interest, and attorney's fees. An appeal was based on the fact that two districts were in proximity. The taxpayer claimed that the plaintiff district was never given voter approval of a tax assessment. The appeals court agreed and reversed the portion of the judgment in favor of the district, affirming the remainder of the award.[88]

In Wisconsin, a school district filed a complaint against a second district to recover real property taxes collected on a parcel in the first district but erroneously paid to the second by the town clerk. Even though under statute the first district had a right to be reimbursed by the second for mispaid taxes, the first district failed to sustain its burden of proving timely notice when it presented no information concerning its date of discovery.[89]

7.8 PERSONAL INJURY

This new section reports cases of personal injuries claimed to result from negligent design, construction, or maintenance of school facilities and properties.

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86. *In re* Shipley School, 464 A.2d 692 (Pa. Commw. Ct. 1983).
87. Hays Consol. Indep. School Dist. v. Valero Transmission Co., 645 S.W.2d 542 (Tex. Civ. App. 1983).
88. Manges v. Freer Indep. School Dist., 653 S.W.2d 553 (Tex. Civ. App. 1983).
89. Elkhorn Area School Dist. v. East Troy Commun. School Dist., 327 N.W.2d 206 (Wis. Ct. App. 1982).

In Florida, a parent sued the school board for the death of his eleven-year-old son who was struck by an auto while en route to a school bus stop. The plaintiff claimed that the board was liable for tort damages because it created a dangerous situation by negligently locating the bus stop. The court of appeals dismissed the case and the supreme court affirmed, ruling that the school's responsibility began when a student reached a bus stop and designation of a bus stop location was a planning-level decision immune to tort liability.[90]

In Maine, a student slipped and fell on an outside stairway in a public schoolyard. He claimed that the stairway was not properly maintained to be free of ice and snow. On appeal, the supreme court affirmed the trial court's decision that there was no substantial compliance with the Maine tort claims act notice of claim procedures.[91]

In Nebraska, an employee sought workers' compensation from his employer and a school for a fall from the roof of a school building. The workers' compensation court awarded full benefits plus a penalty and attorney's costs to the employee and dismissed the school from liability. The employer appealed and the appeals court set aside the awarding of the penalty and attorney's fee. The unsatisfied employer appealed to the supreme court to set aside all damages, and the court *reinstated* all damages as originally awarded to the employee.[92]

In New York, an eight-year-old child brought an action against a school board to recover for injuries sustained from an explosion. The child was playing with chemicals he discovered on school premises and matches found elsewhere. The court of appeals, affirming the decision of the lower courts, held that the school breached its duty for not recognizing that a serious hazard would arise if safeguards were not in place. This required that the chemicals be properly secured so that unsupervised access could not be readily obtained by children.[93]

In Utah, a trial court dismissed a local resident's complaint for injuries suffered when she slipped and fell on an icy sidewalk leading to the entrance of a school building. The supreme court reversed and remanded the decision holding that, if the board of education was found to be negligent, it would be held accountable for its conduct in the same manner as a private property owner.[94]

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90. Harrison v. Escambia Cty. School Bd., 434 So. 2d 316 (Fla. 1983).
91. Foucher v. City of Auburn, 465 A.2d 1120 (Me. 1983).
92. Franklin v. Pawley, 340 N.W.2d 156 (Neb. 1983).
93. Kush v. City of Buffalo, 449 N.E.2d 725 (N.Y. 1983). In Louisiana, an eight-year-old was playing jacks during recess at the same time other students were rolling around a stand used for tetherball. The base of the stand was rolled over her fingers. Plaintiffs claim that the school board was negligent in allowing the stand to be used for anything other than its prescribed purpose. Similar minor instances had occurred previously. The trial court found the board liable regardless of how the accident occurred, and the court of appeals affirmed. Santee v. Orleans Parish School Bd., 430 So. 2d 254 (La. Ct. App. 1983).
94. Gurule v. Salt Lake City Bd. of Educ., 661 P.2d 957 (Utah 1983).

In the District of Columbia, a young child was injured on the grounds of an elementary school by a cross-pole that fell off a fence. Her mother sought recovery from the alteration contractor and the school district. The two defendants filed cross-claims against each other for contribution, with the district also claiming indemnification. The court of appeals affirmed the trial court's decision in favor of the contractor on its claim. Since the school was aware of the dangerous condition the construction site posed, greater supervision was required to ensure the safety of its students.[95]

In Illinois, a student brought an action against a school district to recover for injuries sustained during a softball game in a physical education class. He contended that the field was improperly maintained and the district did not properly give instructions about the game. The appellate court held that the actions of the district and the teacher did not amount to willful and wanton misconduct and, when evidence was viewed in a light most favorable to the student, it still overwhelmingly favored the district.[96]

In Indiana, a student who was injured when he fell through a glass wall between entrance doors to a school brought an action against the school corporation and an architect to recover for his injuries. The circuit court granted summary judgment against the student. The court of appeal held that the ten-year statute of limitations on actions to recover damages for deficiencies in design, planning, supervision, construction, or observation of improvement to real property had expired and did not deny equal protection or violate the privileges and immunities clause or special laws' provision of the state constitution. The summary judgment order was affirmed.[97]

In Louisiana, a young student fought with another during recess in an "off-limits" area to avoid detection. During the altercation, she fell and broke her hip, which resulted in permanent disabling injuries. Her father sued the school board for negligence, citing inadequate supervision by her teachers and hazardous objects located on the ground that caused her to fall. The facts were highly disputed relating to the cause of her fall, but the trial court found that she merely lost her balance. The court of appeals affirmed.[98]

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95. District of Columbia v. Royal, 465 A.2d 367 (D.C. 1983).

96. Weiss v. Collinsville Commun. Unit School Dist. No. 10, 456 N.E.2d 614 (Ill. App. Ct. 1983). In Pennsylvania a student baseball player suffered permanent loss of vision in his right eye when he was hit by a ball his coach had just batted. He contended that the school was liable because of its failure to exercise proper care in the custody and control of the baseball field. The appellate court affirmed the lower court's decision that the injury was not caused from improper or negligent maintenance of the field. Lewis v. Hatboro-Horsham School Dist., 465 A.2d 1090 (Pa. Commw. Ct. 1983).

97. Beecher v. White, 447 N.E.2d 622 (Ind. Ct. App. 1983).

98. Nicolosi v. Livingston Parish School Bd., 441 So. 2d 1261 (La. Ct. App. 1983).

In New York, plaintiffs were injured when their snowmobile collided into a bench located on a snow-covered baseball field owned by a school district. The wooden bench had been in place eleven years and was in good repair. The supreme court denied the district's motion for summary judgment, and the district appealed. The supreme court, appellate division, held that such a bench was not a trap or dangerous structure so as to require the district to guard or warn against it. The order was reversed, and the district's motion for summary judgment granted.[99]

In New York, plaintiff was injured in a fall while leaving an elementary school used as a polling place. The supreme court, appellate division, held that neither the town, the county board of education, nor the school district, acting as agents of the state in the election, were immune from liability for their alleged negligence.[100]

In New York, a student was injured when she struck a gymnasium wall while running a speed test. The student's mother brought suit against the board of education for negligent design of the course and failure to provide adequate instruction on its use. Reversing the decision of the trial court, the supreme court, appellate division, held that there was sufficient proof from which a jury could decide that the school was negligent.[101]

In Oklahoma, a couple brought suit against a school district for injuries sustained by the wife when she tripped on a metal grate protruding above an unlighted school walkway. The trial court dismissed the case due to a statutory exemption limiting liability imposed by the Political Subdivision Tort Claims Act. The court of appeals reversed the ruling, holding that the suit was not barred by the statutory exemption.[102]

In Phildelphia, a student brought suit against the school district alleging negligence in failing to secure school property and maintain adequate lighting. The girl was forcibly taken off an adjacent sidewalk through an unsecured school gate to an unlighted area of the school grounds and beaten. The common pleas court dismissed the complaint and the appellate court affirmed, holding that the district could not be

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99. Mattison v. Hudson Falls Cent. School Dist., 458 N.Y.S.2d 728 (N.Y. App. Div. 1983). In Louisiana, a couple was walking on school property, returning from voting. As the wife stepped from the sidewalk to the parking lot, she tripped over a one-inch lip. The sidewalk had settled, leaving the curb it abutted higher than the sidewalk. The school board was sued for negligence, but the trial court found that the defect did not pose an unreasonable risk of injury to sidewalk users. The court of appeals affirmed. Tipton v. Bossier Parish School Bd., 441 So. 2d 453 (La. Ct. App. 1983).

100. Pujolas v. Town of Tonawanda, 458 N.Y.S.2d 779 (N.Y. App. Div. 1983).

101. Ehlinger v. Board of Educ., 465 N.Y.S.2d 378 (N.Y. App. Div. 1983).

102. Smith v. Broken Arrow Pub. Schools, 665 P.2d 858 (Okla. Ct. App. 1983).

held liable since violent criminal acts were not a reasonably foreseeable use of school property.[103]

7.9 TRESPASS

In South Carolina, a minor was adjudicated a delinquent after three charges of trespassing upon public school property. He appealed, stating that the code under which he was convicted applied only to private property. The supreme court upheld the decision, stating that a trespass upon school property was a trespass "on the premises of another" as proscribed by the code.[104]

7.10 LANDLORD/TENANT

A Mississippi school board, as landowners of leased property, informed its leaseholders that it was necessary to increase their annual lease payments. The increase was predicated on an attorney general ruling that "receiving inadequate compensation for public trust property is a violation of the state constitution." A second letter explained that, if the lease was not renegotiated by a certain date, the lease could be made void in court. The leaseholders brought an action against the board alleging that its letters constituted a threat. The United States district court dismissed the action and the court of appeals affirmed.[105]

In New York City, a taxpayer sued the board of education to prevent alleged waste and the board brought an action to evict the taxpayer as a holdover tenant. The court of appeals ruled that the failure of the board to specify, in detail, its reasons for approving reacquisition and remodeling of a former school building did not constitute the fraud or illegality necessary to support the taxpayer's action. The board prevailed.[106]

7.11 HIGHER EDUCATION

This greatly expanded section reports higher education cases, organized by the same categories used in the school portion of the chapter. Also included are cases on estates, bankruptcy, income taxes, and nuisance.

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103. Vann v. Board of Educ., 464 A.2d 684 (Pa. Commw. Ct. 1983).
104. *In re* Joseph B., 299 S.E.2d 331 (S.C. 1983).
105. Frazier v. Lowndes Cty. Bd. of Educ., 710 F.2d 1097 (5th Cir. 1983).
106. Mesvita of Forest Hills Inst. v. City of New York, 448 N.E.2d 1344 (N.Y. 1983).

7.11a General Board Authority

In 1973, a Wisconsin board of vocational education had made plans to construct new facilities for its technical college. The board and voters approved a $30 million referendum for funding of the project. Nearly five years passed before a site was selected. Meanwhile, a new statute was passed requiring voter approval for all "building program actions." New site selection included a plan to form a split-campus arrangement. Voters petitioned the court to require the board to seek voter reapproval under the new statute or enjoin further action on the new facilities until the statute was complied with. The trial court dismissed the petition on the contention that the project had already been approved by voters. On appeal, the court of appeals ruled that the new statute required this type program be resubmitted to voters before the project was further implemented.[107]

7.11b Zoning and Development

In Florida, a community college board filed a petition in eminent domain for the acquisition of several parcels of land. The landowner first learned of the condemnation in a local newspaper article. The trial court found that the governing statute required an attempt to be made to reach satisfactory agreement with a landowner before condemning his property. Since no such attempt was made, the case was dismissed and the decision was affirmed by the court of appeal.[108]

In Missouri, a university medical corporation possessing power of eminent domain received condemnation on four parcels of land belonging to a taxpayer. On the tenth day after the judgment became final, the university filed to abandon condemnation of one parcel and did not pay the assessment or take possession of that parcel. The taxpayer moved in trial court that the abandonment be denied because it was not filed within ten days of the verdict. The trial court dismissed the abandonment of the condemnation. The appeals court reversed the decision and granted the abandonment petition, ruling that the ten-day period began on finalization of the judgment, not the day of the verdict.[109]

In 1963, a Missouri college was granted a special use permit for several buildings. In 1981, the college asked the city for an amended permit to allow further expansion of the facilities. As per statute, two

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107. Ball v. District No. 4, Area Bd. of Voc.-Tech. Educ., 341 N.W.2d 707 (Wis. Ct. App. 1983).
108. District Bd. of Trustees v. Allen, 428 So. 2d 704 (Fla. Dist. Ct. App. 1983).
109. Washington Univ. Med. Cent. Redevelopment Corp. v. See, 654 S.W.2d 162 (Mo. Ct. App. 1983).

very lengthy public hearings were held. Some council members still had questions, so a public "executive session" was held where questions could be asked of college officials; no public participation was allowed. A neighborhood association filed suit against the city, claiming that new materials was introduced at the "executive session" that it was unable to rebut. The trial and appeals courts ruled that substantial evidence supported the actions of the city council and the special use permit was granted.[110]

A Texas city filed an injunction to prohibit specific activities of a church that were in violation of a zoning ordinance. Zoning laws allowed the operation of a public or parochial school, but excluded colleges or trade schools. The church claimed that "college" activities were too closely related to "church" activities to be separated. The trial court ruled that the church could not operate its "college" and the appeals court affirmed the ruling.[111]

7.11c Building Design and Construction

An Alabama university signed a contract to construct a building. Retainage was set at 10 percent and, halfway to completion, was released to the contractor in exchange for a certificate of deposit of equal value in the name of both parties. The contractor defaulted, the university settled with the performance bond surety, and the surety released all title to any claims that could arise. The university then sued for ownership of the certificate. The trial court found that the contractor had received all funds due it and the university was sole owner of the certificate. The supreme court confirmed the judgment.[112]

A Florida community college filed a petition to stay arbitration of a dispute with a contractor. The circuit court denied the contractor's motion to transfer venue to the county of its sole place of business. The company appealed to the district court, which reversed and stated that the statute providing for venue in arbitration displaced general venue provisions.[113]

In Illinois, a college brought an action against a material supplier for negligent and/or fraudulent misrepresentation of roofing materials used in the construction of a new building and later found defective. On remand from the supreme court, both the circuit and appellate courts

110. Greater Garden Avenue Area Ass'n v. City of Webster Groves, 655 S.W.2d 760 (Mo. Ct. App. 1983).
111. Fountain Gate Ministries, Inc. v. City of Plano, 654 S.W.2d 841 (Tex. Ct. App. 1983).
112. Rush v. Jacksonville State Univ., 439 So. 2d 9 (Ala. 1983).
113. Hedron Constr. Co. v. District Bd. of Trustees, 420 So. 2d 393 (Fla. Dist. Ct. App. 1982).

dismissed the college's action, based primarily on poor legal drafting of its complaint.[114]

In Illinois, a subcontractor filed an action against a general contractor for damages resulting from being delayed on work for a college. In turn, the general contractor filed a third-party action against the college and the architect for causing the delay. The appellate court, reversing the decision of the lower court dismissing the case, held that the action was not barred because of an earlier dispute between the college and the general contractor that was taken to federal court. The general contractor could state a third-party claim against the college and architect since, if the college was responsible for time delays, then this would have caused a chain reaction delaying the subcontractor.[115]

A New Jersey community college contracted for construction of several buildings. The roof subcontractor experienced construction problems, the college sued the contractor, and a settlement was reached. The college then brought suit against the subcontractor. The superior court decided that the action sounded in negligence, breach of warranty, and strict liability in tort, and was governed by a six-year statute of limitations that had expired.[116]

In New York City, a contractor agreed to erect, maintain, and lease a college's temporary dining hall. In return, the college would pay an annual rental and, upon expiration of the lease, had the option of purchasing the structure or paying for its removal. The college did not exercise the option properly and, after five years, the contractor filed suit for two years' back rent plus payment for the building. The college filed for dismissal of the suit because of untimeliness and lack of a cause of action. The dismissal was denied because the suit was not untimely and the contractor was deemed to have an interest in the premises.[117]

In North Carolina, a contract was written for stucco work at a university hospital. Upon completion, the contractor submitted a claim, which the university denied. As per contract, the contractor demanded arbitration. The university filed suit to prevent the arbitration, stating that the contractor was never licensed as a general contractor and thus was ineligible for arbitration. The trial court stayed the arbitration proceedings pending disposition in state court. The court then ruled in favor of the contractor, holding that it was not a

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114. Knox College v. Celotex Corp., 453 N.E.2d 8 (Ill. App. Ct. 1983).
115. Case Prestressing Corp. v. Chicago College of Osteopathic Medicine, 455 N.E.2d 811 (Ill. App. Ct. 1983).
116. Board of Trustees of Bergen Commun. College v. J.P. Fyfe, Inc., 457 A.2d 83 (N.J. Super. Ct. Law Div. 1982).
117. Ames Contracting Co. v. City Univ. of New York, 466 N.Y.S.2d 182 (N.Y. Ct. Cl. 1983).

general contractor, but a subcontractor, eligible for arbitration despite not having a license. An appeals court affirmed the decision.[118]

A Texas construction company and university contracted for the remodeling of two campus buildings. Delays developed for several months on one building and several years on the other. The contractor sued for additional funds, claiming that the university was responsible for the delays. The contractor also charged that it had been prohibited from bidding on other university work because of the delays and was due both actual and exemplary damages for that lost opportunity. The trial court awarded judgment to the contractor for both actual and exemplary damages. The appeals court disagreed and revoked the exemplary damage award. It also remanded the case for retrial, ruling that an explanatory instruction given by the trial court was an impermissible comment on the weight of the evidence.[119]

7.11d Property Taxes

In Georgia, a nonprofit organization formed to provide housing for a state college's fraternities and sororities brought suit to enjoin tax collection on its property. The trial court granted the injunction. The tax board appealed, questioning the idea that a sorority or fraternity was so closely tied to a university that it became entwined in its legal fabric. The supreme court affirmed the judgment that sororities and fraternities be granted exemption from ad valorem property taxation.[120]

The Ohio Supreme Court ruled that a university-owned plot leased as a private residence by individuals not affiliated with the university was exempt from property tax. The land was held in support of its academic mission and renting the house avoided the additional cost of demolition and allowed the building not to be left vacant.[121]

A New York court held that college-owned vacant lots qualified as tax-exempt because they were "an integral part of the future plans and development of the college." The supreme court, appellate division, affirmed the decision.[122]

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118. Duke Univ. v. American Arbitration Ass'n, 306 S.E.2d 584 (N.C. Ct. App. 1983).

119. Board of Regents of N. Texas State Univ. v. Denton Constr. Co., 652 S.W.2d 588 (Tex. Ct. App. 1983).

120. Johnson v. Southern Greek Housing Corp., 307 S.E.2d 491 (Ga. 1983). In Illinois, the supreme court considered the constitutionality of statutes granting property tax exemptions for parsonages, fraternity and sorority houses, and homestead improvements. A property taxpayer filed an action seeking to declare these tax exemptions unconstitutional. The supreme court held that the exemptions were constitutional. McKenzie v. Johnson, 456 N.E.2d 73 (Ill. 1983).

121. Board of Trustees of Ohio State Univ. v. Kinney, 449 N.E.2d 1282 (Ohio 1985).

122. Trustees of Union College v. Board of Assessment Rev., 457 N.Y.S.2d 971 (N.Y. App. Div. 1982).

In New York, an assessment by a city commissioner determined that the property on which a university's stadium was located was not entitled to a full tax exemption. The supreme court, appellate division, held that the determination of whether the stadium was entitled to a tax exemption for education could not be made without the disclosure of its financial records to discover the nature of its primary activities.[123]

In South Carolina, a foundation designed to benefit a private college was given real estate. The property was leased out for the entire period of ownership and proprety taxes were paid under protest. The foundation claimed that its link to the school gave the property exemption from ad valorem taxes. Both the trial court and the court of appeals ruled that the foundation was an entity separate from the college. Recovery of the taxes was denied.[124]

7.11e Personal Injury

In West Virginia, a child was injured in a fall from a theater stage on a university campus. His parents filed suit against the board of regents and others in the county where the accident occurred. A circuit court granted a motion dismissing the regents from liability, because the code states that "proceedings against a state agency may only be brought in the Circuit Court of Kanawha County." A remaining defendant unsuccessfully brought suit in Kanawha County against the regents seeking indemnity or contribution. The supreme court reversed this dismissal, stating that actions against the liability insurance of a state agency need not be brought in Kanawha County only.[125]

In California, a student brought an action against a community college district for damages after she was assaulted on a school parking lot. She claimed that the college had a duty to warn her and protect her against would-be assailants. In addition, she claimed that the college was liable for having maintained a "dangerous condition" on its property. The court of appeal held that the college did not have a duty to warn her and that the complaint failed to state a cause of action under the tort claims act.[126]

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123. Syracuse Univ. v. City of Syracuse, 459 N.Y.S.2d 645 (N.Y. App. Div. 1983).

124. Citadel Development Found. v. County of Greenville, 308 S.E.2d 797 (S.C. 1983).

125. Pittsburgh Elevator Co. v. West Virginia Bd. of Regents, 310 S.E.2d 675 (W. Va. 1983).

126. Peterson v. San Francisco Commun. College Dist., 190 Cal. Rptr. 335 (Cal. Ct. App. 1983). In North Carolina, a cheerleader was raped and murdered off campus following a basketball game. Her estate brought suit against the college alleging negligence. The trial court granted the college's motion for summary judgment. The court of appeals affirmed, ruling that a landowner generally had no duty to protect one on his premises from criminal attack, unless such attack was reasonably foreseeable. The court found that the few scattered incidents of crime during the prior twenty-five years did not show a repeated incidence of criminal activity. Brown v. North Carolina Wesleyan College, 309 S.E.2d 701 (N.C. Ct. App. 1983).

In Florida, a parent brought suit on behalf of the estate of her deceased son. The boy was fatally injured in a fall while attempting to extricate himself from a university's stalled elevator car. The trial court dismissed the complaint against the state due to a failure to state a cause of negligence. The court of appeals reversed, ruling that liability did not depend upon whether the state's acts were a direct cause of the injuries, as long as those injuries were a foreseeable consequence of its conduct. The case was remanded on the question of foreseeability.[127]

In Missouri, a student brought suit for personal injuries suffered when she fell due to a hole in a campus sidewalk. The trial court dismissed her charges, holding that the law at the time of the accident barred the suit under the doctrine of sovereign immunity. On appeal, the student claimed that maintenance of a sidewalk was a proprietary function not protected by governmental immunities and, by accepting her tuition, the university had contracted to provide safe premises for her. The trial court's decision was affirmed by the court of appeals.[128]

In New York, a motorcycle rider was injured when he struck some railroad ties on university property. The rider claimed that the owner was negligent in permitting railroad ties to remain on the property and failing to warn of the danger. Also, the rider alleged that the presence of railroad ties constituted a nuisance. The supreme court, appellate division, held that the rider failed to sufficiently allege a public nuisance and to state a cause of action.[129]

In New York, a person walking on a community college's sidewalk slipped and fell on a patch of ice. He subsequently filed suit against the college for negligence. The supreme court, appellate division, dismissed the complaint and held that the plaintiff failed to provide sufficient evidence of negligence.[130]

In New York, a university student was struck by a falling metal closet in a public dormitory. An order from the court of claims granted the student's motion to dismiss the university's affirmative defenses. The supreme court, appellate division, reversed the decision, holding that neither a claim nor a notice of intention to file a claim was filed within the ninety days required.[131]

In New York, a student filed a claim for personal injuries while visiting an off-campus housing office. His injuries were sustained when his hand broke through a showcase upon which he was sitting while

127. Bryan v. Florida, 438 So. 2d 415 (Fla. Dist. Ct. App. 1983).
128. Fowler v. Board of Regents for Cent. Missouri State Univ., 637 S.W.2d 352 (Mo. Ct. App. 1982).
129. Andersen v. University of Rochester, 458 N.Y.S.2d 404 (N.Y. App. Div. 1982).
130. Berna v. Monroe Commun. College, 459 N.Y.S.2d 191 (N.Y. App. Div. 1983).
131. Brinkley v. City Univ. of New York, 460 N.Y.S.2d 53 (N.Y. App. Div. 1983).

looking through listings. The supreme court, appellate division, affirmed the court of claims' dismissal, deciding that the state was not negligence in placing a glass showcase in the office. The showcase was not placed in the room as a place to sit; rather, chairs were there for that purpose.[132]

In New York, a man brought an action against a university to recover damages for injuries received in an elevator accident. The trial court granted a motion denying the university the use of an engineering report prepared for it by an outside engineering consultant. The supreme court, appellate division, ruled that since the consultant's report was prepared for purposes of litigation and was without any factual material that could not be duplicated, the report need not be disclosed.[133]

In Texas, a student was injured when she tripped over a water hose lying across a university sidewalk. She brought suit against the university, alleging negligence in several respects. The trial court dismissed the case, based on a failure to state a cause of action under the Tort Claims Act. The court of appeals reversed the decision and remanded the cause for trial based on the university's failure to provide a safe place for its students—invitees—to walk.[134]

7.11f Landlord/Tenant

In the District of Columbia, tenants brought an action against their landlord, a university, for damages due to flooding. A clause in the lease relieved the landlord of any liability due to water damage. However, the court found a breach of such a warranty and reversed the ruling. It suggested that the tenants might obtain damages under another lease provision and remanded the case.[135]

In New York, the supreme court, appellate division, ruled that university-owned apartments that were vacant from 1971 to 1974 were thus "vacancy decontrolled" and exempt from rent stabilization.[136]

A New York City university's holdover proceeding was stayed by the civil court where its tenants had previously commenced a declaratory judgment action in supreme court, seeking protection under the Loft Law.[137]

In New York, a student was dismissed from a university for failing to comply with a notice to vacate university-owned housing. The student petitioned, challenging the determination, but it was dismissed in the trial court. Upon appeal, the supreme court, appellate division, held

132. Weissman v. State, 463 N.Y.S.2d 329 (N.Y. App. Div. 1983).
133. Fedorcyzk v. New York Univ., 464 N.Y.S.2d 14 (N.Y. App. Div. 1983).
134. Rawlings v. Angelo State Univ., 648 S.W.2d 430 (Tex. Civ. App. 1983).
135. George Washington Univ. v. Weintraub, 458 A.2d 43 (D.C. 1983).
136. Slaven v. Syracuse Univ., 459 N.Y.S.2d 3 (N.Y. App. Div. 1983).
137. New York Univ. v. Molner, 464 N.Y.S.2d 984 (N.Y. Civ. Ct. 1983).

that the university's action against the student was in his capacity as a tenant and not as a student, so the university's expulsion of him was arbitrary and capricious.[138]

7.11g Estates

In Virginia, an action was brought against a university seeking the enforcement of a provision of a contract it held concerning a granted parcel of land. The deceased grantor had asked that certain conditions be met concerning the use of the land, and failure to do so would "convey the premises to . . . the surviving 'next of kin'." The United States district court dismissed the action brought by the grantor's sister for failure to include the other surviving family members. The sister appealed and the court of appeals reversed the dismissal because Virginia law did not applicably define the term "next of kin" and the complaint stated a cause of action.[139]

In Kansas, an action was brought to determine whether an inheritance tax was to be paid from the residue of a decedent's estate or apportioned among devisees and legatees as provided by statute. The court of appeals affirmed the decision of the lower court holding that the will did not clearly call for charging the inheritance taxes solely to the residue of the estate and that taxes were to be paid according to the statute.[140]

A Missouri university obtained a piece of real property pursuant to an order of distribution of an estate. The order was not recorded. The tax collection office sent tax bills to the estate, which forwarded them to the university. The university notified the assessor's office of the ownership change and requested that the property be removed from the tax rolls, as it was a tax-exempt institution. Bills continued to be sent and the property was eventually sold for delinquent taxes. The university sued the buyer and was awarded the property because the assessor's office had been notified of the ownership change before issuing the collector's deed. The decision was affirmed by an appeals court.[141]

7.11h Bankruptcy

In Vermont, a private college filed for relief under chapter 7 of the bankruptcy code, and a bank took possession of the real property as an indenture trustee. After several years, the college brought an action to

138. Harris v. Trustees of Columbia Univ., 470 N.Y.S.2d 368 (N.Y. App. Div. 1983).
139. Fletcher v. Washington & Lee Univ., 706 F.2d 475 (4th Cir. 1983).
140. Wendland v. Washburn Univ., 667 P.2d 915 (Kan. Ct. App. 1983).
141. Washington Univ. v. Leachman, 641 S.W.2d 455 (Mo. Ct. App. 1982).

determine its liability for property taxes after the trustee took possession. The bankruptcy court concluded that the college was responsible only for real estate taxes up to the date of foreclosure by the bank.[142]

A Pennsylvania college ordered a scoreboard that was to be billed to its alumni association. The company was never paid, and the alumni association filed for bankruptcy. More than six months later, the company filed suit against the college in a court of common pleas. That court transferred the case to the commonwealth court, which transferred the complaint to the board of claims. The board ruled against the college, which appealed. The commonwealth court vacated the decision and awarded judgment to the college based on a six-month statute of limitations.[143]

7.11i Income Taxes

A Nebraska college president sued to recover federal income taxes paid for the fair rental value of his lodging furnished by the college. The United States district court held that the fair rental value was not excludable from his gross income. To be excludable, an employee was required to accept lodging as a condition of his employment, the lodging had to be furnished for the convenience of the employer, and the lodging had to be located on the business premises.[144]

7.11j Nuisance

An Ohio homeowner brought an action against a state university seeking damages for erecting a basketball court next to the homeowner's property. The court of common pleas dismissed the action for lack of jurisdiction. The court of appeals held that an action to enjoin a nuisance could be brought only in the court of claims. Also, an action alleging violation of a public duty for failing to comply with local and state regulations could be brought in either court.[145]

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142. Corporation of Windham College v. Town of Putney, 34 Cankr. 408 (D. Vt. 1983).
143. Kutztown State College v. Degler-Whiting, Inc., 463 A.2d 1206 (Pa. Commw. Ct. 1983).
144. Winchell v. United States, 564 F. Supp. 131 (D. Neb. 1983).
145. Beatley v. Board of Trustees of Ohio State Univ., 446 N.E.2d 182 (Ohio Ct. App. 1982).